

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

BRET ROBERT OSBORN, MICHAEL
PFAFF, KATHLEEN ANN PFAFF AND
MARTY GAYLE OSBORN, on behalf of
themselves, the general public, and all
others similarly situated,

Plaintiffs,

vs.

EMC CORPORATION, and Does 1
through 50,

Defendant.

CASE NO. C 04-00336 JSW

ORDER:

(1) CONDITIONALLY CERTIFYING
SETTLEMENT CLASS;
(2) PRELIMINARILY APPROVING
PROPOSED SETTLEMENT;
(3) APPROVING NOTICE TO CLASS,
CLAIM FORM, AND FORM OF
ELECTION NOT TO PARTICIPATE IN
SETTLEMENT CLASS; AND
(4) SETTING HEARING FOR FINAL
APPROVAL OF SETTLEMENT

September 30

Date: ~~April 29~~, 2005

Time: 9:00 a.m.

Hon. Jeffrey S. White

On April 29, 2005, a hearing was held on the parties' joint motion seeking certification of a settlement class in this action, preliminary approval of the parties' proposed settlement, approval of the notice to be sent to the class about the settlement and the claim form and form of an election not to participate in the settlement class, and the setting of a date for the hearing on final approval of the settlement. Plaintiffs Bret Robert Osborn, Michael Pfaff, Kathleen Ann Pfaff, and Marty Gayle Osborn ("Plaintiffs") and defendant EMC Corporation ("EMC") appeared through their respective counsel. The Court having read and considered the papers on the motion, the arguments of counsel, and the law, and good cause appearing therefor,

IT IS ORDERED:

1. The Court conditionally certifies the settlement class on the grounds that the class satisfies the class action requirements under Rule 23 of the Federal Rules of Civil Procedure, those requirements being numerosity, typicality of the class representatives' claims, adequacy of representation, predominance of common issues, and superiority. *See* Fed. R. Civ. P. 23(a); *see also Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (9th Cir. 1998). The class is hereby conditionally certified for purposes of settlement to include the following:

ALL CURRENT AND FORMER SALES EMPLOYEES OF EMC CORPORATION DURING TIMES THEY WORKED WITHIN THE STATE OF CALIFORNIA WHO WERE CHARGED BACK PREVIOUSLY PAID COMMISSIONS ON LEASE TRANSACTIONS AT ANY TIME FROM AUGUST 18, 1999 UNTIL THE SETTLEMENT EFFECTIVE DATE, EXCLUDING ANY CURRENT OR FORMER EMPLOYEES WHO, AS OF THE SETTLEMENT EFFECTIVE DATE, SIGNED VALID RELEASES AND/OR WAIVERS OF LEGAL CLAIMS, AS DETERMINED BY THE COURT.

2. Should the parties' settlement not become final, the class will revert to an uncertified status with no prejudice to EMC's right or ability to contest class certification.

3. The parties' Joint Stipulation Of Settlement And Release Between Plaintiffs And Defendant Regarding "Lease Claims" Asserted In This Matter (the "Settlement"), attached at Exhibit 4, is granted preliminary approval, as the Court finds the Settlement to be within the range of reasonableness for a settlement offer. *See* 2 NEWBERG ON CLASS ACTIONS 3d (1992) § 11.25.

1 4. The parties' proposed Notice of Conditional Certification of Class, and
2 Preliminary Approval of Proposed Settlement Regarding "Lease Claims" ("Notice to Class") is
3 approved on the grounds that the Notice to Class fulfills the requirement of neutrality in class
4 notices, and summarizes the proceedings to date, and the terms and conditions of the Settlement,
5 in an informative and coherent manner, in compliance with the Manual's statement that "the
6 notice should be accurate, objective, and understandable to Class Members." Manual for
7 Complex Litigation, Third (Fed. Judicial Center 1995) § 30.211; *see* 2 Newberg § 8.39. The form
8 of Notice to Class is attached to this order as Exhibit 1.

9 5. The parties' proposed Claim Form is approved and attached to this order as
10 Exhibit 2.

11 6. The parties' proposed form of Election Not to Participate in Settlement Class
12 ("Election Not to Participate") is approved and attached to this order as Exhibit 3.

13 7. Rosenthal & Company LLC or such other claims administrator as the parties
14 mutually agree on is appointed to act as the settlement administrator, pursuant to the terms set
15 forth in the Settlement, with costs and fees not to exceed \$ 17,000 for administration duties.

16 8. EMC is directed to provide the settlement administrator not later than 21 days after
17 the date of this order the names, last-known mailing addresses, social security numbers and
18 amount of commission chargebacks on Lease Transactions it has for each identified class
19 member.

20 9. The settlement administrator is directed to mail the approved Notice to Class,
21 Claim Form, and Election Not to Participate by first class mail to the class members not later than
22 10 days after it receives the mailing addresses for the class members.

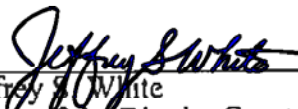
23 10. Any class member who wishes to share in the proceeds under the Settlement, has
24 until 60 days before the hearing for final approval of the Settlement, as scheduled in this order, to
25 submit his or her Claim Form.

26 11. Any class member who elects not to participate in the Settlement has until 60 days
27 before the hearing for final approval of the Settlement, as scheduled in this order, to submit her or
28 his Election Not to Participate pursuant to the procedures set forth in the Notice to Class.

1 12. Any class member who objects to the Settlement has until 60 days before the
2 hearing for final approval of the Settlement, as scheduled in this order, to submit her or his
3 objection pursuant to the procedures set forth in the Notice to Class.

4 13. The final approval hearing will be held on April 28, 2006, ~~2005~~, at 9:00
5 a.m. ~~4:00 p.m.~~, to determine whether the proposed settlement set forth in the Settlement should be
6 granted final approval as fair, reasonable, and adequate as to the members of the class.

7
8 Dated: October 28, 2006, ~~2005~~.


Jeffrey S. White
Judge of the District Court